

behind Mack et al. (U.S. Patent No. 6,510,325). In response, the Examiner represented that Applicants would need to submit another declaration under 37 C.F.R. § 1.131 showing “day-to-day” diligence during a ten (10)-day period from September 17, 1999 (the date of the assignment referenced in the August 24, 2004 Declaration of Junichiro Shibata) through September 27, 1999, the U.S. filing date of the Mack reference.

The Examiner was asked if he could confirm whether or not there is a requirement that diligence be shown on a “daily” basis during the referenced ten (10)-day period of September 17, 1999 through September 27, 1999. The Examiner, on the same day, represented that his supervisor concluded that such “daily” diligence need not be proved during this ten (10)-day period. As such, the Examiner concluded that the 37 C.F.R. § 1.131 Declaration of Junichiro Shibata, as filed, was sufficient to antedate the Mack reference.

II. General Comments

Claims 1-46, 48 and 50 are all the claims pending in this application. Claims 1, 24, and 50 are independent claims.

Claim 50 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Kamamoto et al. (U.S. Patent No. 5,982,429). In addition, claims 1-6, 11-18, 21-22, 24-29, 34-41, 44-45 and 50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mack et al. (U.S. Patent No. 6,510,325) in view of Isashi (U.S. Patent No. 5,719,799).¹ Finally, claims 23, 46 and 48

¹ Although the Office Action Summary states that, among other things, claims 10-18 are rejected and claims 7-9 are objected to, Applicants respectfully submit that the correct grouping of claims should be, in part, claims 11-18 rejected and claims 7-10 objected to. Similarly, at paragraph No. 3 of the ... (footnote continued)

stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mack in view of Isashi and further in view of Kamamoto.

Applicants thank the Examiner for indicating that claims 7-10, 19-20, 30-33 and 42-43 are objected to but would be allowable if rewritten in independent form to include all of the limitations of the base claims and any intervening claims. However, for the reasons set out below, Applicants respectfully submit that it is not necessary to rewrite these claims at the present time because the rejection of at least independent claims 1 and 24 is improper.

Applicants note that the Examiner has indicated that independent claim 24 has been analyzed in the same manner as independent claim 1. Accordingly, the following discussion with respect to claim 1 applies equally to claim 24.

III. § 103(a) Rejections

All the pending § 103(a) rejections are based on Mack, in combination with other references. Mack's prior art date is September 27, 1999.

As noted above, and in the Statement of the Substance of the Interview filed on March 9, 2005, the Examiner has confirmed that the August 24, 2004 Declaration under 37 C.F.R. § 1.131 of Junichiro Shibata is sufficient to swear behind the Mack reference. This Declaration, along with the attached Exhibits, demonstrate a conception date at least as early as September 17, 1999 (which is prior to September 27, 1999) and continued diligence up to at least December 14,

Office Action, the rejected claims should include, in part, claims 11-18, instead of claims 11-17. Applicants respectfully request correction in the next Office Action.

1999, the filing date of the Japanese priority document, Japanese Patent Application No. 354459/1999. Therefore, the Applicants respectfully submit that Mack does not qualify as prior art under any Sections of 35 U.S.C. § 102.

Since there are no other pending grounds for the rejection of these claims, with the exception of claim 50 (discussed below), Applicants respectfully submit that claims 1-6, 11-18, 21-29, 34-41, 44-46, and 48 remain allowable over the alleged combination of Mack and Isashi and Mack, Isashi and Kamamoto.

IV. § 102(b) Rejections of Claim 50

With respect to the Examiner's remaining rejection of independent claim 50, this claim recites a state sensor for detecting "at least three positional relationships." Since Kamamoto's switch 38 is disclosed as operating in an on/off manner (two (2) positional relationships - open or closed), Kamamoto fails to disclose, teach or suggest sensing more than two (2) positions.

The Examiner asserts that switch 38 is used to control turning on or off the power to LCD 7 and EVF 6. In addition, the Examiner asserts that switch 38 is used to also turn on speaker 41. The Examiner, therefore, concludes that switch 38 can control at least three positional relationships of the flip LCD 7 and camera body. Applicants respectfully submit that this is incorrect. In addition, "controlling" positional relationships does not address, in any manner, "detecting" positional relationships, as required in claim 50.

Claim 50 specifically recites "at least three positional relationships based on the relationship of the flip unit and the main unit detected by said state sensor." Accordingly, as

recited, it is the “state sensor” which detects at least three positional relationships. Kamamoto’s switch 38 is merely a single-pole single-throw (SPST) switch as indicated by Fig. 17 and col. 10, line 19 - col. 11, line 42. Simply put, switch 38, by definition, has one moving contact and one stationary contact. In other words, it is impossible for Kamamoto’s SPST switch (switch 38) to “detect” at least three positional relationships.

Further, as disclosed in Kamamoto, switch 38, itself, does not “control” or “detect” three or more positional relationships. Instead, pressure projection 12a and pressure piece 38a merely allow switch 38 to “switch over,” so that it can turn on or off the image field. (Col. 11, lines 37-42). Accordingly, the opening of LCD 7 merely acts to release switch 38. This does not, and cannot, change the structure of switch 38. That is, switch 38 remains an on/off SPST switch. Therefore, claim 50 is patentable over the cited art.

In view of the above, Applicants respectfully submit that claims 1-46, 48 and 50 are allowable. Accordingly, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

RESPONSE UNDER 37 C.F.R. § 1.116
U.S. Appln. No. 09/733,984

Q62244

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Respectfully submitted,



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